

Nothing in the Act or FCC rules require Sprint or other CLECs to build to Verizon's multiple interconnection points solely to reduce Verizon's reciprocal compensation and transport charges.

In its *Local Competition First Report and Order*, the FCC determined that competing carriers are free to choose the most efficient points of interconnection to lower costs of transport and termination. The FCC stated that Section 251(c)(2) "allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic."³⁶ The FCC further ruled that each party bears responsibility for the costs of transporting its originating traffic, the same position that Sprint advocates here.³⁷

Furthermore, in an interconnection dispute involving the same issue, the FCC intervened as *amicus curiae* and urged the court to reject US West's argument that the Act requires competing carriers to "interconnect in the same local exchange in which it intends to provide local service."³⁸ The FCC found that "[n]othing in the 1996 Act or binding FCC regulations requires a new entrant to interconnect at multiple locations within a single LATA. Indeed, such a requirement could be so costly to new entrants that it would thwart the Act's fundamental goal of opening local markets to competition."³⁹

³⁶ *Local Competition First Report and Order* ¶ 172.

³⁷ *Id.* ¶ 1062; Flurer Declaration at ¶ 11.

³⁸ Memorandum of the Federal Communications Commission as Amicus Curiae, at 20-21, *US West Communications Inc., v. AT&T Communications of the Pacific Northwest, Inc., et al.* (D.Or. 1998) (No. CV 97-1575-JE).

³⁹ *Id.* at 20.

Many federal district courts and state commissions have agreed and have rejected as inconsistent with Section 251(c)(2) incumbents' efforts to require competing carriers to establish points of interconnection in each of their local calling areas because such a requirement imposes undue costs and burdens on new entrants.⁴⁰

The California Public Utilities Commission in an arbitration between AT&T and Pacific Bell, adopted AT&T's equivalent interconnection proposal setting the default interconnection point at Pacific Bell's tandem and AT&T's switch, and requiring the use of one-way trunks whereby each company is responsible for the construction and maintenance of its own trunks to deliver traffic to the

⁴⁰ See, e.g., *US West Communications v. AT&T Communications of the Pacific Northwest, Inc., et al.*, No. C97-1320R, 1998 U.S. Dist. LEXIS 22361 at *26 (W.D. Wa. July 21, 1998), (US West's contention that the "Act requires a CLEC to have a POI in each local calling area in which that CLEC offers local service" is "wrong"); *US West Communications, Inc., v. Minnesota Public Utilities Commission, et al.*, No. Civ. 97-913 ADM/AJB, slip op. at 33-34 (D. Minn. 1999) (rejecting U S West's argument that section 251(c)(2) requires at least one point of interconnection in each local calling exchange served by US West); *US West Communication, Inc., v. Arizona Corporation Commission*, 46 F.Supp. 2d 1004, 1021 (D.Ariz. 1999) ("The court also rejects U S West's contention that a CLEC is always required to establish a point of interconnection in each local exchange in which it intends to provide service. That could impose a substantial burden upon CLECs, particularly if they employ a different network architecture than U.S. West"); *US West Communications, Inc. v. AT&T Communications of the Pacific Northwest, Inc., et al.*, 31 F. Supp. 2d 839, 852 (D. Or. 1998) ("Although the court agrees with US West that the Act does not define the minimum number of interconnection points, the court also rejects US West's contention that a CLEC is required to establish a point of interconnection in each local exchange in which it intends to provide service. That is not legally required, and the cost might well be prohibitive for prospective customers.") See also *US West Communications, Inc. v. MFS Intelenet, Inc.*, No. C97-222WD, 1998 WL 350588, *3 (W.D. Wa. 1998), *aff'd* *US West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9th Cir. 1999). Most recently, the U.S. District Court for Colorado issued a similar ruling in *US West Communications, Inc. v. Robert J. Hix, et al.*, No. C97-D-152, __ F.Supp. __ (D.Colo., June 23, 2000) ("Moreover, the Court holds that it is the CLEC's choice, subject to technical feasibility, to determine the most efficient number of interconnection points, and the location of those points.").

interconnection points.⁴¹ In Kansas, the arbitrator in the TCG/Southwestern Bell Telephone ("SWBT") arbitration similarly allowed TCG to interconnect at SWBT's local and access (citing to the Texas 271 Order).⁴² The arbitrator's findings and conclusions were accepted and adopted by the Kansas State Corporation Commission as its own.⁴³ The New York Public Service Commission and the Massachusetts D.T.E. expressly rejected BA's geographically relevant interconnection point (GRIP) proposal.⁴⁴ The Massachusetts D.T.E. noted:

Because Bell Atlantic's GRIP proposal would require CLECs to establish additional interconnection points at Bell Atlantic's tandem and end offices and does not allocate transport costs in a competitively neutral manner, we reject it. We direct Bell Atlantic to revise its tariff to eliminate the GRIP proposal and to include a provision that reflects that each carrier has an obligation to transport its own customers' calls to the destination end-user on another carrier's network or bear the cost of such transport.⁴⁵

⁴¹ Public Utilities Commission of the State of California, Opinion, *Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Application 00-01-022, page 13 (CA PUC August 7, 2000).

⁴² Arbitrator's Order No. 5: Decision. *In the Matter of the Petition of TCG Kansas City, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252 of the Telecommunications Act of 1996*, Docket No. OO-TCGT-571-ARB, at 4, 10 (Aug. 7, 2000).

⁴³ Order Addressing and Affirming Arbitrator's Decision, *In the Matter of the Petition of TCG Kansas City, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252 of the Telecommunications Act of 1996*, Docket No. OO-TCGT-571-ARB, at 2 (Sept. 8, 2000).

⁴⁴ New York Public Service Commission, Case 99-C-1389, *Petition of Sprint Communications Company L.P. Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Bell Atlantic-New York*, Order Resolving Arbitration Issues, issued and effective January 28, 2000 at 13. Massachusetts D.T.E. 98-57, Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the following tariffs: M.D.T.E. Nos. 14 and 17, filed with the Department on August 27, 1999, to become effective on September 27, 1999, by New England Telephone Telegraph Company d/b/a Bell Atlantic-Massachusetts, March 24, 2000 at 146.

⁴⁵ Id.

FCC rules require that an ILEC must allow interconnection at any technically feasible point of interconnection. Based on the foregoing, Verizon's interconnection requirements (i.e., GRIP) are inconsistent with the requirement to allow interconnection at any technically feasible point. Accordingly, Verizon cannot be said to be in compliance with checklist item 1.

4. Verizon's own conduct compels a finding that it has not met the checklist and that the local markets are not irreversibly open to competitive entry.

Over the past eighteen months, Sprint and Verizon have been negotiating interconnection agreements in Massachusetts and New York, with the intention of adopting substantially all the agreed upon terms and conditions on a region-wide basis, adjusting for limited state-specific revisions. As part of these negotiations, Verizon has consistently advanced positions that have been contrary to applicable law and are designed to have unreasonably increased Sprint's interconnection costs. As a result, Sprint exhausted the negotiation window in these states and was forced to arbitrate numerous issues with Verizon to resolve significant differences. In Pennsylvania, Verizon has once more resurrected these same contentious issues to Sprint. Without a fair and equitable interconnection agreement, Sprint is, yet again, deterred and delayed from serving Pennsylvania customers.

In August, 1999, Sprint initiated negotiations with Verizon in Massachusetts in order to enter into a new interconnection agreement that would replace the original one and more readily provide Sprint with the essential inputs to bring Sprint ION to market. After extensive negotiations and effort, Sprint was nonetheless unable to obtain a voluntary agreement with Verizon and was forced to petition the

Massachusetts DTE to arbitrate eighteen distinct issues.⁴⁶ While some issues remain matters of genuine dispute, it is equally true that Verizon took a number of facially unreasonable positions during its negotiations with Sprint, forcing Sprint to petition the DTE for arbitration on these issues. In some instances, Verizon conceded its obligations during the arbitration process; in other respects, Sprint is being forced to complete the arbitration process (which remains ongoing) before it can achieve an interconnection agreement suitable for bringing Sprint ION to consumers.

Sprint submits these issues for the purpose of fully exposing Verizon's disregard for its federal and state regulatory obligations. This disregard is highly relevant to the this Commission's and the FCC's assessment of whether Verizon is currently providing interconnection in accordance with the checklist on a non-discriminatory basis, whether Verizon can reasonably be expected to continue to fulfill these obligations, and thus whether competition can be expected to continue and grow if 271 authority is granted at this time.

In the New York 271 Order, the FCC stated that, while isolated instances of unfair or discriminatory conduct by a BOC would not provide the basis for withholding action on a Section 271 application, evidence of a number of incidents might "constitute a pattern of discriminatory conduct that undermines [its] confidence that Bell Atlantic's local market is open to competition and will remain so after Bell

⁴⁶ See, *Petition of Sprint Communications Company L.P. for an Arbitration Award of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements with Bell Atlantic-Massachusetts, Inc.*, DTE Dkt. No. 00-54 (filed June 16, 2000).

Atlantic receives interLATA authority.”⁴⁷ It is in this context that Sprint submits its experience with Verizon, one that Sprint believes is hardly unique for CLECs in Pennsylvania. In the *Michigan II Order*, the FCC stated

Because the success of the market opening provisions of the 1996 Act depend, to a large extent, on the cooperation of incumbent LECs, including the BOCs, with new entrants and good faith compliance by such LECs with their statutory obligations, evidence that a BOC has engaged in a pattern of discriminatory conduct or disobeying federal and state telecommunications regulations would tend to undermine our confidence that the BOC’s local market is, or will remain, open to competition once the BOC has received interLATA authority.⁴⁸

The Commission should be alert to evidence submitted into this record of similar CLEC experiences, and assess whether such a pattern is occurring.

5. Verizon’s Arbitration Positions Make Plain That In The Future It Will Alter At Least Some Of The Conditions That Have Made Some Market Entry Possible In Pennsylvania.

UNE Combinations. Verizon’s purported demonstration of competitive entry sufficient to satisfy Section 271 rests significantly upon the presence of considerable numbers of CLECs serving customers through pre-assembled UNE combinations.⁴⁹ In supporting this assertion that competition in Pennsylvania is rapidly expanding, Verizon witness Whelan cites that “the number of UNE loops purchased by CLECs increased by more than 550 percent” and, for the month of October 2000, “almost a doubling of CLEC use of the UNE Platform.”⁵⁰

On a going forward basis, it seems dubious whether UNE combinations will in fact remain a fully available option to Pennsylvania CLECs. Specifically, Verizon

⁴⁷ New York 271 Order ¶ 444.
⁴⁸ See Michigan II Order ¶ 397.
⁴⁹ Whelan Declaration at ¶ 4.
⁵⁰ Id.

has suggested that it might reserve the availability of combined elements to only those instances where a CLEC serves migrating customers that already have the precise combination on a preassembled basis. This Commission has not yet addressed this issue, though as understood and explained by the Massachusetts DTE, Verizon's position in January 2000 was:

that it will voluntarily provide that combination even where the loop and local switching elements comprising the UNE-P do not already exist in combined form for a specific customer in its network . . . that it will offer this combination throughout Massachusetts under the same terms for existing loop and local switching combinations, subject to limitations discussed below . . . that this offer addresses the principal type of combination that CLEC parties in this case have sought and satisfies fully any Department concerns about a differentiation between existing and new UNE-P arrangements . . . *and that it reserves the right to review this voluntary commitment based on judicial action by the Eighth Circuit Court of Appeals concerning FCC Rules 51.315(c)-(f).*⁵¹

Verizon is of course free to exploit the standing decision of the Eighth Circuit,⁵² but Verizon cannot simultaneously ask this Commission and the FCC to find that competition will flourish as it withdraws the very entry conditions that make

⁵¹ *Consolidated Petitions for Arbitration of Interconnection Agreements*, DTE/DPU Dkt. Nos. 96-73/74, 96-75, 96-80/81, 96-83, 96-94, Phase 4-P Order at 6 (Jan. 10, 2000) <<http://www.state.ma.us/dpu/telecom/96-73/UneProvi.htm>> (emphasis added).

⁵² Verizon apparently intends to do so. In its arbitration with Sprint in Massachusetts, Verizon labeled Sprint's interpretation of "currently combined" as used in FCC Rule 51.315(b) as "erroneous." Verizon Response to Sprint Petition for Arbitration at 13-14, *Petition of Sprint Communications Company L.P. for an Arbitration Award of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements with Bell Atlantic-Massachusetts, Inc.*, DTE Dkt. No. 00-54 (filed July 11, 2000). Sprint's "erroneous" reading merely recited the FCC's First Report and Order in the Local Competition Docket. See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 15499, ¶ 296 (1996). Having compromised on language referencing applicable law, it would appear that Verizon intends to withdraw this means of entry from Sprint and other CLECs going forward.

that opportunity possible. Verizon's posture on this issue in all likelihood means that CLECs will no longer be able to obtain UNEs combined by Verizon in any instance where the customer is not already receiving service through exactly those combined elements. This would materially disadvantage CLECs in the competition for new customers. With CLECs' growth substantially limited in this way, no extrapolation of the sort argued by Verizon is justified or reasonable. In turn, this Commission or the FCC cannot reasonably make comfortable predictions of competitive growth in this area given Verizon's explicit refusal to sustain CLECs' access to customarily combined UNE combinations.

Capping Competitors' Rates. Verizon has also sought to impose additional obstacles and costs to competition that the New York regulators refused to tolerate. For example, Verizon has taken the position that Sprint should not be allowed to charge Verizon a retail rate higher than the retail rates charged by Verizon for the same services. With the possible exception of some reciprocal compensation rates, nothing in the Act provides for arbitrarily capping Sprint's rates at Verizon's rates for the same services. Verizon lost this very issue in New York, where the New York Public Service Commission rejected Bell Atlantic-New York's similar attempts to tie Sprint's prices to its own tariff because Sprint maintains acceptable tariffs on file with the PSC.⁵³

Verizon's corporate position, if accepted, would enable Verizon to control Sprint's rates. Verizon could automatically lower Sprint's rates by simply lowering

⁵³ *Petition of Sprint Communications Company L.P. Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Interconnection Agreement with Bell Atlantic-New York, Case 99-C-1389, Order Denying Rehearing and Clarifying Order Resolving Arbitration Issues at 10 (NYPSC May 26, 2000) ("NYPSC Arbitration Order").*

Verizon's rates and disrupt efficient, cost-based pricing by Sprint. Further, Verizon's rate cap proposal, if successful, could expand beyond these two companies and very conceivably apply to local pricing for the entire telecommunications industry in Pennsylvania, tying the rates of all competitors to Verizon's rates.⁵⁴ This threat to competitive pricing was appropriately rejected in New York.⁵⁵

Verizon is generally not bound in other states for issues litigated in New York. But it certainly should not be permitted to rely on favorable competitive conditions in New York when it seeks at the same time to materially detract from those conditions by imposing additional costs on competitors. By refusing to provide certain inputs in Pennsylvania that it had provided in New York,⁵⁶ and by imposing new costs on entrants in contradiction to New York, Verizon has precluded any reliance on New York in favor of its filing here.

Indeed, Verizon has refused in the past to allow CLECs to "opt into" provisions from existing Verizon interconnection agreements with any competitor, even importing the new provisions from an agreement in force in another state. The FCC recently held that Verizon's position was inconsistent with the conditions placed on its approval of the Bell Atlantic-GTE merger. Specifically, the FCC stated that Verizon's position is "not consistent with the underlying purpose of the MFN

⁵⁴ Verizon has available at least two alternatives that do not disrupt the competitive process. It can protest Sprint's tariffs, or Verizon can file a complaint in the event it believes the rates to be unreasonable. Moreover, a commission could suspend and investigate Sprint's or any other CLEC's proposed tariffed rates if they were unreasonable.

⁵⁵ See NYPSC Arbitration Order at 9-10.

⁵⁶ Verizon refused Sprint's request to use the Sprint/Verizon-New York agreement in Massachusetts and other states (subject of course to any necessary changes to conform the contract to other states' applicable law). This has required Sprint to file for arbitration against Verizon in other states, including Massachusetts and New Jersey, rather than adapt the New York agreement to other states (which would have avoided unnecessary litigation and delays).

provisions to facilitate deployment of competition and to spread the use of best practices.”⁵⁷

B. CHECKLIST ITEM 2 - Nondiscriminatory access to UNEs.

Section 271 requires a BOC to provide “nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).”⁵⁸ As set forth below, Verizon has failed in its burden to demonstrate that it has met the requirements of Section 271(c)(2)(B)(ii).

1. Verizon has failed to demonstrate nondiscriminatory access to DSL because Verizon has refused to provide access to loop qualification information in compliance with the FCC’s UNE Remand Order.

One of the fundamental goals of the Telecommunications Act of 1996 is “to promote innovation and investment by all participants in the telecommunications marketplace, in order to stimulate competition for all services, including advanced services.”⁵⁹ As the FCC has recognized, xDSL-based products, such as Sprint’s ION, will allow end users to make “ordinary voice calls over the public switched network at the same time that he or she is using the line for high-speed data transmission,”⁶⁰ thereby ultimately revolutionizing the way consumers communicate.

⁵⁷ See, FCC Letter dated December 27, 2000 to Michael L. Shor, regarding, Bell Atlantic/GTE Merger Order, CC Docket No. 98-184, ASD File No. 00-30, Attached.

⁵⁸ 47 U.S.C. § 271(c)(2)(B)(ii).

⁵⁹ Deployment of Wireline Services Offering Advanced Telecommunications Capability, 14 FCC Rcd 4761, ¶ 1 (1999) (“Advanced Services Order”). The importance of data to future competition cannot be understated. According to Verizon, “data traffic has already surpassed voice traffic on [its] networks - and, with data capacity doubling every 90 days as opposed to every 12 years for voice, the lead is lengthening rapidly.” See Verizon News Archive, “Local Exchange Carriers’ Entry into Long Distance - Impact on the Development of Advanced Technology” at 1-2 (Feb. 17, 2000) <<http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=37351&>>.

⁶⁰ Advanced Services Order ¶ 10.

Existing xDSL technologies, however, contain limits and distance sensitivities.⁶¹ In efforts to increase its market reach, Sprint has been investigating the feasibility of placing collocation arrangements at remote terminal locations. As addressed by Ms. Thompson in her attached Declaration, Sprint on several occasions requested specific information from Verizon so as to make sound business decisions concerning a request for collocation arrangements at remote terminals.⁶²

Upon doing so, Sprint discovered that Verizon's process for initiating a remote collocation arrangement entailed that a CLEC should submit an application with the appropriate Common Language Location Identifier ("CLLI") Code and address of the site where the CLEC seeks to collocate. Only upon receipt of the application will Verizon make determinations as to whether or not space is available in the site requested and as to whether the requested collocation arrangement is technically feasible.⁶³

⁶¹ Thompson Declaration at ¶ 4.

⁶² Thompson Declaration at ¶ 8. Specifically, as set forth in paragraph 9 of the Thompson Declaration, Sprint has sought the following information from Verizon:

- A. Remote Terminal (RT) CLLI
- B. Remote Terminal Address (city, street, zip code)
- C. Remote Terminal Equipped Lines
- D. Remote Terminal Working Lines
- E. Remote Terminal to Central Office Transport Type(s) Available and Planned, e.g., dark Fiber, DS3, etc.
- F. Remote Terminal Type (manufacturer, model, etc.)
- G. Remote Terminal Housing Size and Type, e.g., CEV
- H. All Serving Area Interface ("SAI") CLLIs for each Remote Terminal
- I. Serving Area Interface Address(es) (city, street, zip code)
- J. Number of Terminal Connections (F1 & F2) Available in each Serving Area Interface
- K. All Service Addresses for each Serving Area Interface (city, street, zip code)

⁶³ Thompson Declaration at ¶ 5.

Verizon has not been forthcoming with the up-front information that is needed to initiate a request for remote collocation.⁶⁴ Verizon has been particularly obstreperous regarding loop information, *en masse*, arguing that it has no general obligation to provide CLEC access to loop data in its possession, and further that it has no obligation to provide data to Sprint.

In order to promote competition for advanced services, the Pennsylvania Commission and the FCC must ensure that competitors are able to obtain timely and nondiscriminatory access to existing loop qualification information so as to support deployment of the services they seek to offer. While the FCC did not require ILECs to construct a database for the benefit of CLECs, its UNE Remand Order plainly mandates non-discriminatory access to all loop qualification information in the possession of the ILEC, including digital loop carrier data.

Specifically, in the UNE Remand Order the FCC stated “incumbent LECs must provide requesting carrier the same underlying information that the incumbent has in any of its own databases or other internal records.”⁶⁵ The UNE Remand Order requires Verizon to produce this information on an unfiltered basis.⁶⁶ It further mandates that Verizon give these data to CLECs not only on a loop-by-loop basis, but also on the basis of the “zip code of the end users in a particular wire center, NXX code, or on any other basis that the incumbent provides information to itself.”⁶⁷ The FCC clarified that, “the relevant inquiry is not whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather

⁶⁴ Id. at ¶4.

⁶⁵ UNE Remand Order ¶ 427.

⁶⁶ Id. ¶ 428 (ILEC “may not filter or digest such information”).

⁶⁷ Id. ¶ 427.

whether such information exists *anywhere* within the incumbent's back office and can be accessed by any of the incumbent's personnel.

Denying competitors access to such information, where the incumbent (or the affiliate, if one exists) is able to obtain the relevant information for itself, will impede the efficient deployment of advanced services."⁶⁸ Nowhere does the UNE Remand Order endorse the view that the ILEC can selectively withhold some information from some CLECs because it does not approve of the lawful, competitive use to which the data might be put. The UNE Remand Order on this point plainly requires as follows:

[T]he relevant inquiry is not whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather whether such information exists anywhere within the incumbent's back office and can be accessed by any of the incumbent LEC's personnel. * * * To permit an incumbent LEC to preclude requesting carriers from obtaining information about the underlying capabilities of the loop plant in the same manner as the incumbent LEC's personnel would be contrary to the goals of the Act to promote innovation and deployment of new technologies by multiple parties.

These obligations were reemphasized in the FCC's review of SBC's 271 application for Oklahoma and Kansas recently.⁶⁹ As reiterated there, any information residing in the ILEC's internal records regarding loop plant, including the presence of digital loop carrier or other remote concentration devices, must be shared with requesting carriers.⁷⁰ And, again, the FCC opined that the ILEC must provide loop qualifying information based, for example, on an individual address or

⁶⁸ Id. ¶ 430.

⁶⁹ See, Oklahoma/Kansas 271 Order ¶¶ 121-125.

⁷⁰ Id. ¶ 121.

*zip code of the end users in a particular wire center, NXX code or on any other basis” on which the ILEC itself has access.*⁷¹

Notwithstanding these orders, Verizon has argued that its obligations stop at line-by-line inquiries, and it has refused to give Sprint access to essential information in Verizon’s possession regarding digital loop carriers used in the network. Sprint has specifically stated that it is not asking Verizon to create a new database, but rather to gain access to data that plainly Verizon possesses regarding the location and other demographic information relating to the digital loops in the network. Verizon has, of course, not claimed that it lacks such data.

Nowhere does the UNE Remand Order endorse the view that the ILEC can selectively withhold some information from some CLECs because it does not approve of the lawful, competitive use to which the data might be put. Verizon’s refusal to provide access to loop qualification information in compliance with the FCC’s UNE Remand Order is discriminatory since Verizon has access to this information for its own operations. Such information is not available from other sources in the same manner that central office data is available.⁷²

Verizon’s efforts to resist its federal obligations, as spelled out in the FCC’s own rules and orders, are simply not tolerable. This posturing should be fully accounted for in this Commission’s recommendation to the FCC under Section 271. The Commission should not endorse Verizon’s 271 application until Verizon provides non-discriminatory access to loop qualification information.

2. Required UNEs are not presently available to CLECs.

⁷¹ Id. (emphasis added).

⁷² Thompson Declaration at ¶ 8.

Section 271(c)(B)(2)(ii) requires that Verizon provide access to unbundled network elements at cost-based rates and on terms and conditions that are just, reasonable and non-discriminatory.⁷³ The FCC has held that where, as here, there are clear errors in the state commission's factual findings that cause the end results to fall outside of the range that the reasonable application of TELRIC would produce, it will reject a BOC's application for 271 relief.⁷⁴

Such is the situation at present. The Commission cannot render a finding as to Verizon's satisfaction of this competitive checklist item given the pending UNE rate proceeding and, more importantly, given the evidentiary record in that proceeding.

Specifically, as this Commission is aware, the Global Order required that Verizon file tariff revisions to Tariff 216 in order to include certain UNEs, as addressed in the Global Order.⁷⁵ On November 30, 1999, Verizon PA filed tariff revisions ostensibly in compliance with the Global Order. Thereafter, the Commission established an expedited proceeding to review whether Verizon's prices for the proposed Tariff 216 rate elements were in accordance with *the* Global Order.⁷⁶

⁷³ 47 U.S.C. §§ 271(c)(2)(B)(ii), 251(c)(3), 252(d)(1).

⁷⁴ See, e.g., New York 271 Order ¶ 244; Kansas/Oklahoma 271 Order ¶ 74.

⁷⁵ Global Order, at Ordering ¶ 6. The Global Order, in turn, required that Verizon develop UNEs in accordance with the MFS III proceeding as modified by Scenario Number 9.

⁷⁶ See, Order entered June 8, 2000 at Docket Nos. R-00005350C0001, A-310696F0002, A-310698F0002 and R-00005261, at n.4. Covad Communications Inc. and Rhythms Links, Inc. ("Rhythms") also had petitioned to include the following cost issues associated with line sharing: (1) splitter installation, (2a) Verizon relay rack for splitters per shelf; (2b) splitter land & building per shelf; and (3) Maintenance of splitter equipment per 996 line shelf.

In the mean time, the FCC issued its UNE Remand Order. On April 28, 2000, Verizon filed further revisions to Tariff 216, at Docket No. R-00005314, allegedly pursuant to the FCC's UNE Remand Order. The investigation at Docket No. R-00005314 was consolidated with and into the expedited UNE proceeding at Docket No. R-00005261.⁷⁷

As of this writing, that expedited UNE proceeding remains pending before this Commission. Parties await a recommended decision from the Presiding Judge. The preliminary ruling of the presiding judge⁷⁸ and the evidence of record in the expedited UNE proceeding, however, abundantly demonstrate that Verizon refused to develop costs based upon the costing methodology and the specific inputs determined by the Commission to be TELRIC compliant in the Global Order.⁷⁹

Verizon's proposed UNEs are not compliant with the Global Order and, therefore, cannot support a Commission finding that Verizon's UNEs satisfy any required pricing principles. Unless and until such compliance with the Global Order has been finally determined, a consultative finding of Verizon's compliance with Section 271((c)(2)(B)(ii) cannot be found.

3. Verizon must be directed to supplement its Section 271 Filing regarding its intended compliance with Section 251(c) of the Act.

As the Commission is aware, on June 16, 2000, in the context of the then Bell-Atlantic/GTE merger, the FCC issued an order ("FCC Merger Order") that,

⁷⁷ Id. at Ordering ¶ 2. See also, Order entered June 22, 2000, Docket Nos. R-00005350C0001, A-310696F0002, A-310698F0002, and Docket No. R-00005261 at Ordering ¶¶ 4, 5.

⁷⁸ The Presiding Judge in the expedited UNE proceeding granted summary judgment and found that Verizon failed to present a *prima facie* case for a vast majority of the UNEs addressed in this proceeding. *Expedited UNE proceeding*, Tr. at 257-264.

⁷⁹ See, e.g., Global Order at 74, 76.

among other matters, required that the Verizon operating companies, including Verizon (f/n/a Bell Atlantic – Pennsylvania, Inc.), provide advanced services through an affiliate that is structurally separate.⁸⁰ By Order entered November 4, 2000, at Docket Nos. A-310200 F0002, A-310222 F0002, A-310291 F0003, and A-311350 F0002, the Pennsylvania PUC approved the Verizon/GTE merger. The advanced services provided on an intrastate basis and subject of this merger condition include Frame Relay Service, Asynchronous Transfer Mode Service, and Switched Multi-megabit Data Services.

Thereafter, Verizon and Verizon North, Inc. ("Verizon North") were authorized to transfer certain assets to Verizon Advanced Data Inc. ("VADI").⁸¹ VADI is an affiliate of Verizon Communications. VADI is authorized to provide advanced services in Pennsylvania by combining unbundled network elements and reselling services obtained from Verizon and Verizon North and other incumbent local exchange carriers. VADI and Verizon have an existing interconnection agreement, and have in place a Master Services Agreement (with amendments) in which Verizon provides various interim and ongoing support services to VADI.⁸²

However, on January 9, 2001, the United States Court of Appeals for the District of Columbia recently cast serious doubt upon the use of such an advanced

⁸⁰ See also, *In the Matter of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control*, CC Docket No. 98-184, Memorandum Opinion and Order (released June 19, 2000).

⁸¹ *Joint Application of Verizon Pennsylvania Inc. and Verizon Advanced Data Inc. for authorization to transfer certain assets from Verizon Pennsylvania Inc. to Verizon Advanced Data Inc.*, Docket Nos. A-310200 F0004, A-310935 F0003, G-00000801 (order entered October 27, 2000). On March 24, 2000, at Docket No. A-310935, VADI had filed an application for a certificate of public convenience to provide broadband packet data services in Pennsylvania as a facilities-based carrier or as a reseller provider.

⁸² See, Order entered July 13, 2000, at Docket No. G-00000758.

services affiliate in satisfaction of the requirements of Section 251(c) of the Act. Specifically, in Association of Communications Enterprises v. Federal Communications Commission, 2001 U.S. App. LEXIS 217, the Court found that the FCC erred when it permitted the merged company to offer advanced services through a separate affiliate and, by doing so, to avoid Section 251(c) duties.⁸³ In relevant part, the Court found that the FCC erroneously presumed that the Ameritech/SBC advanced services affiliate is not a successor or assign so long as it complied with various structural and transactional safeguards.⁸⁴ The Court found that the FCC's interpretation of the Act in this manner was unreasonable and in so doing held as follows:

In short, the Act's structure renders implausible the notion that a wholly owned affiliate, providing telecommunications services with equipment originally owned by its ILEC parent, should be presumed to be exempted from the duties that ILEC parent. [footnote omitted.]⁸⁵

Moreover, in the structural separation proceeding, at Docket Nos. M-00001353 and M-00001353F0002, Verizon presented an alternative proposal to the Global Order's finding that a retail/wholesale structural separation requirement would best accomplish the pro-competition goals of Chapter 30 and the Act. In the structural separation proceeding, Sprint advocated if this Commission were to approve use of a separate data affiliate, as an alternative to the retail/wholesale

⁸³ The Court initially noted that although the case arose out of a merger proceeding, the FCC's approval of such an advanced services affiliate had a "broader application" in that any ILEC could establish a similar affiliate and thereby avoid Section 251(c)'s resale obligations. 2001 U.S. App. LEXIS 217, *7.

⁸⁴ These included independent operations, separate officers, directors, employees, books, records, and accounts, and transactions with SBC/Ameritech conducted on an arm's length basis.

⁸⁵ 2001 U.S. App. LEXIS 217, *17.

structural separation requirement of Global Order, then the Commission should ensure that Verizon's advanced services affiliate complies with Section 251(c) of the Telecommunications Act of 1996.⁸⁶

Given the D.C. Circuit Court of Appeals decision and in light of the fact that the structural separation proceeding is still pending, the Commission should not approve the Section 271 application until Verizon has completely complied with the ultimate outcome in the structural separation proceeding. The Commission's structural separation proceeding arises from the Global Order's finding that some form of structural separation was required in order to ensure that Verizon provide nondiscriminatory access to facilities and services and to foster competition. To the extent that the Commission approves the use of Verizon's separate data affiliate, VADI or another entity, then that data affiliate must be subject to Section 251(c). In this event, Verizon should be directed to supplement the instant 271 application so as to demonstrate compliance with Section 251(c) relative to Verizon, VADI and Verizon long distance concerning non-discriminatory access to UNEs.

C. CHECKLIST ITEM 13 - RECIPROCAL COMPENSATION

Consistent with the pro-competition goals of the Act and the Commission's Global Order, Sprint seeks the ability to implement new services which would use Sprint's access trunks situated between the Sprint network and the Verizon network for local traffic. This flexibility is technologically akin, for example, to traditional ILEC operator services accessed by end users dialing "0 minus."

⁸⁶

47 U.S.C. § 251(c) (Verizon must "provide, to any requesting carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis....").

Sprint has approached Verizon and has requested interconnection terms and conditions which would treat these services provided pursuant to "operator services" calls as local for reciprocal compensation purposes. It is Sprint's position that a "default" jurisdiction for all such operator traffic cannot be determined before handing the call off to Sprint. Any attempt to automatically characterize all operator services calls as access traffic at the time the call is delivered to the operator services platform is troublesome because it is impossible to determine the jurisdictional nature of an outbound operator call at the time it is made. As a result, the compensation treatment for any local operator services calls should not be considered access chargeable. Mr. Flurer explained as follows:

In the past, all traffic to 00- dialed operator services was considered access chargeable traffic by default. In the case of a Verizon customer using his telephone to complete a local telephone call to his mother across the street through use of the 00- dialing code, the 00- code would route the end user to the operator services platform, where the customer could instruct the system to dial the telephone number for his mother. The end user in effect placed a local call as the call originates and terminates in the same local calling area.⁸⁷

Verizon, conversely, insists upon applying access charges to all operator services calls. Sprint's position is based, in part, upon the "non-jurisdictional" quality of the call⁸⁸ and a FCC regulation and subsequent case law which defines a local call in accordance with an "end-to-end" analysis. Section 51.701 of the FCC's rules and regulations provides as follows:

§ 51.701 Scope of transport and termination pricing rules.

⁸⁷ Flurer Declaration at ¶15.

⁸⁸ Flurer Declaration at ¶14. Only after the call is routed for completion can the jurisdiction of the call be determined and reported.

- a. The provisions of this subpart apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other telecommunications carriers.

- b. *Local telecommunications traffic.*

For purposes of this subpart, local telecommunications traffic means:

- 1) *Telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider⁸⁹ that originates and terminates within a local service area established by the state commission.⁹⁰*

Moreover, Verizon historically has always considered its calls to the operator services platforms as “local/intraLATA”, but historically has always insisted upon Sprint’s operator service call as access traffic. As noted in the Flurer Declaration, this is discriminatory treatment.⁹¹ Provisioning of local/intraLATA and interLATA traffic over existing trunk facilities are more efficient⁹² and more consistent with the Act’s requirement that Verizon provide reciprocal compensation arrangements on a non-discriminatory basis before a dominant local exchange provider, such as Verizon, is given 271 approval.⁹³

If Verizon is given 271 approval in Pennsylvania prior to resolution of these issues, there will be less incentive for Verizon to come to an agreement on this issue as part of an interconnection agreement. Moreover, if Verizon is given 271 approval in Pennsylvania prior to resolution of these issues, there will be less incentive for Sprint to try to enter the Verizon local exchange market with this service. Thus, it is critical that the Commission direct Verizon to compensate for these types of local

⁸⁹ CMRS providers (mobile and wireless carriers) are not at issue here.

⁹⁰ 47 C.F.R. § 51.701 (1999) (emphasis added). See also, Bell Atlantic Telephone Co. v. Federal Communications Commission, 206 F.3d 1 (D.C. Cir. 2000).

⁹¹ Flurer Declaration at ¶ 19.

⁹² Flurer Declaration at ¶ 16.

⁹³ 47 U.S.C. § 271(c)(2)(B)(xiii).

calls, as is done for other local traffic, otherwise Verizon's actions will be allowed to create a new, more formidable barrier to entry. As the Flurer Declaration notes:

It is inefficient for carriers to be required to establish separate trunk groups for local/intraLATA traffic when there is capacity available on the existing access network. From a facilities, trunking, and switch port perspective, there are tremendous network efficiencies to be gained by combining these traffic types. For example, ILECs have built their interoffice networks over many years. Sprint and other CLECs are suddenly expected to build a new separate network in a much shorter period of time in order for their customers to make and receive local calls. The restrictions Verizon is placing on Sprint would impose precisely the type of economic barrier to entry the FCC's rules were designed to prevent.⁹⁴

Section 271(c)(2)(B)(xiii) requires that Verizon provide reciprocal compensation arrangements in accordance with Section 252(d) of the Act. Relative to this service, Verizon refuses to provide such reciprocal compensation arrangements and continues to exert its historic control over the bottleneck. Sprint submits that the Commission should render a finding that Verizon has not satisfied this checklist item for the reasons set forth above.

D. CHECKLIST ITEM 14 - RESALE

Section 271(c)(2)(B)(xiv) of the Act requires a BOC to make "telecommunications services available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).⁹⁵ Section 251(c)(4)(A) requires incumbent LECs "to offer for resale at wholesale rates any telecommunications

⁹⁴ Flurer Declaration at ¶ 16.

⁹⁵ 47 U.S.C. § 271(c)(2)(B)(xiv).

service that the carrier provides at retail to subscribers who are not telecommunications carriers.”⁹⁶ Furthermore, section 251(c)(4)(B) prohibits “unreasonable or discriminatory conditions or limitations” on resale.⁹⁷

As discussed in detail below, Verizon has not demonstrated that it has satisfied checklist item 14 because it has placed unreasonable restrictions on resale of its telecommunications services. Accordingly, the Commission should not endorse any subsequent 271 filing with the FCC until Verizon makes these services available for resale at a wholesale discount.

1. Verizon refuses to resell vertical features under 251(c)

In interconnection negotiations Sprint has attempted to obtain from Verizon a vertical feature as a resold service under Section 251(c)(4). Sprint proposed language in a new Section 7.0 of the Agreement to read as follows:

Except as otherwise explicitly provided by Applicable Law, there shall be no restriction on the resale, under Section 252(c)(4) of the Act, of stand-alone vertical services and/or vertical features.

Vertical features are optional services that an end user may purchase which enhance the functionality of the local service.⁹⁸ Examples of vertical features include services such as Call Forwarding/Busy/Don’t Answer where the subscriber’s telephone calls are automatically forwarded to another location, such as a mailbox or other number that the subscriber designates.⁹⁹

⁹⁶ Id. § 251(c)(4)(A).

⁹⁷ Id. § (4)(B).

⁹⁸ Flurer Declaration at 1, ¶23.

⁹⁹ Id.

This issue is important to Sprint's ability to compete and carry out its business plans in Pennsylvania. Sprint desires to offer customers new and innovative services that require the use of these vertical features. As Sprint witness Mr. Flurer explains,

Sprint is attempting to offer customers new and innovative services that require the use of these vertical features. These vertical features are building blocks to a Sprint service offering. Without these vertical features, Sprint cannot offer such services as call forwarding to the customer's wireless phone or Internet call forwarding. Consumers are therefore denied a competitive alternative to Verizon's incumbent service.¹⁰⁰

Indeed, Verizon offers the call forwarding vertical feature to its customers in much the same fashion contemplated by Sprint.¹⁰¹ The "single number" product, currently being test marketed by Verizon accomplishes precisely the same end as Sprint is seeking with its purchase of stand alone vertical features.¹⁰² Moreover, Verizon recently launched services similar to Sprint's product in New York.¹⁰³

Furthermore, Verizon admitted in response to Sprint discovery in another jurisdiction that Call Forwarding Busy Line/Don't Answer is available on a stand alone basis for Enhanced Service Providers ("ESPs") and Verizon would make it

¹⁰⁰ Id. Flurer Declaration ¶125.

¹⁰¹ See Verizon response to Sprint 1-3, *Petition of Sprint Communications Company L.P. for an Arbitration Award of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements with Bell Atlantic-Massachusetts, Inc.*, DTE Dkt. No. 00-54 (filed June 16, 2000)..

¹⁰² Id.

¹⁰³ In a press release dated February 4, 2001, Verizon announced two new services – Talking Call Waiting and Internet Call Manager. With Talking Call Waiting, first there is a tone and then a computerized voice announces the name of the caller to the subscriber who is on another call. Internet Call Manager notifies the customers of incoming calls while they are on the Internet using the same phone line.
<http://newscenter.verizon.com/proactive/newsroom/release.vtml?id+49168>.

available to Sprint on the same terms and conditions as other ESPs.¹⁰⁴ Verizon provides the following vertical services to ESPs: Call Forwarding Variable, Call Forwarding Busy Line, Call Forwarding Don't Answer, Call Forwarding Busy Line/Don't Answer, and Station Message Detail Interface.¹⁰⁵ Verizon does not, however, voluntarily agree to provide vertical features to Sprint under the resale discount. Verizon refuses to make vertical features available, independent of the underlying basic telephone service.

Since it is clear that vertical features are telecommunications services, Verizon should provide these services to Sprint for resale at wholesale prices and refrain from imposing unreasonable or discriminatory conditions on the resale of such services.

2. Verizon is required to make vertical features available to Sprint for resale at wholesale prices and cannot impose any unreasonable conditions or limitations

The Commission should not credit Verizon's attempt to circumvent its statutory obligation under the Telecom Act to make vertical features available for resale free from unreasonable restrictions. The command to ILECs like Verizon is clear. Under the Telecom Act Verizon has the duty —

¹⁰⁴ Verizon response to Sprint 1-2, *Petition of Sprint Communications Company L.P. for an Arbitration Award of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements with Bell Atlantic-Massachusetts, Inc.*, DTE Dkt. No. 00-54 (filed June 16, 2000).

¹⁰⁵ Verizon response to Sprint 1-12, *Petition of Sprint Communications Company L.P. for an Arbitration Award of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements with Bell Atlantic-Massachusetts, Inc.*, DTE Dkt. No. 00-54 (filed June 16, 2000).